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ABSTRACT

This booklet, for parents of children with disabilities in Colorado, outlines the rights guaranteed to parents under the Individuals with Disabilities Education Act as amended in 1997. An introduction provides space for identifying a local contact person and notes the need to translate this information for parents whose language is other than English. The booklet then goes on to explain parent rights under the law in the following areas: free appropriate public education, prior notice to parents, parent consent, independent educational evaluation, educational surrogate parents, student records, discipline, mediation, state complaint procedures, impartial due process hearing, and private school placement. (DB)

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ED 427 444

EDUCATIONAL RIGHTS OF PARENTS

Under Provisions of the Individuals with Disabilities Education Act (Special Education)

COLORADO DEPARTMENT OF EDUCATION

SPECIAL EDUCATION SERVICES UNIT

November 1997

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IMPORTANT DISCLAIMER

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This brochure includes the new parent rights outlined in the Individuals with Disabilities Act Amendments of 1997. The content of this brochure has not been formally approved by the Office of Special Education Programs in Washington D.C. This approval is pending the approval of final federal regulations.

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INTRODUCTION

Described in this pamphlet are parent educational rights required under federal and state special education rules and regulations. It is important that you, as a parent, understand your rights in special education relating to your child.

School staff are available to assist you in understanding these rights and are available on request to provide you with any further explanation. If needed, the school will provide an interpreter or translation to help assure that you understand.

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If you have any questions or would like further information please contact:

Name Telephone

NOTE

Parents whose language is other than English will need to be provided an oral or written translation in their native language.

AN EXPLANATION OF PROCEDURAL SAFEGUARDS AVAILABLE TO PARENTS OF CHILDREN WITH DISABILITIES

FREE APPROPRIATE PUBLIC EDUCATION

You have a right to participate in meetings with respect to the identification, evaluation, Individualized Education Program (IEP) plan, placement, and the provision of a free appropriate public education (FAPE) for your child. Your child's general education teacher should be involved with the IEP development.

An eligible child with a disability has a right to receive a free appropriate education that is outlined as an Individualized Education Program. The program is meant to address your child's unique needs.

PRIOR NOTICE TO PARENTS

The school will notify you by letter if they are proposing to change or refuse to change your child's special education program. The notice must be easily understandable. You must also receive notice of special education meetings about your child within a reasonable time so you can attend.

The school district must provide you with written prior notice each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child.

The notice must include:

1. a full explanation of all of the procedural safeguards available to you in your native language;

2. a description of the action proposed or refused by the school district;

3. an explanation of why the school district proposes or refuses to take the action;

4. a description of any options the school district considered and the reasons why those options were accepted or rejected;

5. a description of each evaluation procedure, test, record, or report the school district used as a basis for the proposal or refusal;

6. a description of any other factors which are relevant to the school's proposal or refusal;

7. a statement that you, as a parent of a child with a disability, have protection under the procedural safeguards of special education law, and the means by which a copy of the procedural safeguards can be obtained; and

8. sources for you to contact to obtain assistance in understanding the provisions of special education.

If you need assistance in understanding any of the procedural safeguards or anything else relating to your child's education, please contact the Director of Special Education of your local school district.

A copy of the procedural safeguards will be available to you at a minimum, a) upon the initial referral for evaluation, b) upon each notification of an IEP meeting, c) upon reevaluation of your child, and d) upon registration of a complaint with respect to any

matter relating to the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education to your child.

The procedural safeguards notice must be written in your native language or other mode of communication, unless it is clearly not feasible to do so, and written in an easily understandable manner. If your native language or other mode of communication is not a written language, the school must take steps to ensure that a) the notice is translated to you orally or by other means in your native language or other mode of communication, b) that you understand the content of the notice, and c) that there is written evidence that these requirements have been met.

PARENT CONSENT

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Your written permission is required before your child is initially evaluated, reevaluated, and placed in special education.

The school must obtain your informed consent before conducting a preplacement evaluation, initial placement, and reevaluation of your child in a program providing special education and related services. Except, in cases of reevaluation, your consent need not be obtained if the school district can demonstrate that it had taken reasonable measures to obtain your consent and you failed to respond. The school district may require parental consent for other services and activities.

Information regarding consent will be written in your native language or other mode of communication. You should understand the reason written consent is being asked and understand that you can revoke your consent at any time.

The school district may use the federal or state procedures for due process hearings to determine whether your child may be evaluated or initially provided special education and related services should you refuse to consent, subject to your rights to appeal the decision of the hearing. Pending any administrative or judicial proceeding, your child would remain in his or her present educational placement, unless you and the school district agree otherwise.

INDEPENDENT EDUCATIONAL EVALUATION

If you disagree with the school's evaluation of your child, you can request an independent evaluation, conducted by someone not employed by your school district.

You have the right to obtain an independent educational evaluation of your child at public expense if you disagree with an evaluation obtained by your school district. An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the school district. The school district will provide, upon your request, information about where an independent educational evaluation may be obtained. However, your school district may initiate a due process hearing to show that its evaluation is appropriate. If it is determined that the evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense. If you obtain an independent educational evaluation at private expense, the results of the evaluation must be considered by the evaluation and/or planning team in any decision made with respect to the provision of a free appropriate public education to your child,

and may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualification of the examiner, must be the same as the criteria which the school district uses when it initiates an evaluation.

EDUCATIONAL SURROGATE PARENTS

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Some children do not have parents who can advocate for them in the special education process. An educational surrogate parent is someone appointed by the school to represent the child at special education meetings.

Each school district shall ensure that an individual is assigned to act as an educational surrogate parent for a child whenever the parents of a child are not known and/or the school district cannot, after reasonable efforts, locate the parents; or if the child is a ward of the State under the laws of the State. The school district must have a method for determining whether a child needs an educational surrogate parent, and for assigning an educational surrogate parent to the child.

The person assigned as the educational surrogate parent shall not be an employee of the state education agency, school district, or any other agency that is involved in the education or care of the child.

The educational surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education.

STUDENT RECORDS

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You have the right to see or request copies of your child's school records. If you disagree with items in the records, you can ask if they can be changed or removed.

ACCESS TO RECORDS

Your school district must permit you to inspect and review any education records relating to your child with respect to the identification, evaluation, and educational placement of your child, and the provision of a free appropriate public education to your child, which are collected, maintained, or used by the school district under special education. The school district must comply with your request without unnecessary delay and before any meeting regarding an individualized education program or any hearing relating to the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child, and in no case more than 45 days after your request has been made.

Your right to inspect and review education records under this section includes:

1. the right to a response from the participant agency to reasonable requests for explanations and interpretations of the records;

2. your right to have your representative inspect and review the records; and

3. your right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school district may presume that you have authority to inspect and review records relating to your child unless the school district has been advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

If any education record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

The school district must provide you, on request, a list of the types and locations of education records collected, maintained, or used by the school district.

FEES FOR SEARCHING, RETRIEVING, AND COPYING RECORDS

The school may not charge a fee to search for or to retrieve information under this part, but may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

RECORD OF ACCESS

The school must keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the school district), including the name of the party, the date access

was given, and the purpose for which the party was authorized to use the records.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you believe that information in education records collected, maintained, or used under this part is inaccurate, misleading or violates the privacy or other rights of your child, you may request the school district to amend the information.

The school district must decide whether to amend the information in accordance with your request within a reasonable period of time of receipt of the request. If the school district decides to refuse to amend the information in accordance with the request, it must inform you of the refusal and of your right to a hearing as set forth below.

The school district shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform you in writing.

If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform you of the right to place in the records it maintains on your child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school. Any explanation placed in your child's records under this section must be maintained by the school as part of the records of the child as long as the record or contested portion is maintained by the school. If the records of the child or the contested portion is

disclosed by the school district to any party, the explanation must also be disclosed to the party.

Discipline is an important part of learning. The IEP Team, including the parent, needs to determine appropriate disciplinary procedures for students with disabilities.

Discipline issues relating to students with disabilities are extensive. Additional information can be obtained from your school administrator or IEP Team.

A free appropriate public education must be made available to all eligible children with disabilities, including children with disabilities who have been suspended or expelled (removed from their current educational placement for more than ten school days in a given year) from school.

1. Short term suspensions may be imposed for discipline infractions for not more than 10 school days during the school year.

2. Either before but no later than 10 days after taking disciplinary action, the IEP Team should meet to develop an assessment plan to address the problem behavior or review or modify the plan, if there is one already in place to address the behavior.

3. Disciplinary actions of more than 10 days require the IEP Team, including the parent, to hold an IEP meeting to determine if the child is receiving an appropriate education and to conduct a manifestation determination. This process will determine if there is a relationship between your child's

behavior and the disability. If services were not appropriate or if the behavior was a manifestation of your child's disability, your child may not be expelled or suspended for more than 10 days.

If the result of the IEP team's review is that your child's behavior was not a manifestation of your child's disability, then your child may be disciplined in the same manner as a child without a disability would be disciplined, except that the school district must continue providing a free appropriate public education for your child.

If you disagree with the determination that your child's behavior was not a manifestation of your child's disability or with any decision regarding placement, you may request a hearing.

4. If your child is expelled (removed from school) or placed in an alterative educational setting, your child must still be provided services and modifications described in the current IEP.

5. A child with a disability can be placed in an interim alternative setting for up to 45 days if the child brings a weapon to school or a school function, is in possession of or using illegal drugs, and/or sells or solicits the sale of a controlled substance while at school or a school function. This decision is made by the IEP Team, including the parent.

6. A hearing officer can order a change in placement to an interim alternative educational setting for up to 45 days if it can be determined that the child is substantially likely to injure him/herself or others in their current placement.

MEDIATION

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On rare occasions, you might disagree with the special education testing, services or placement for your child. You can try to resolve your disagreements by requesting mediation, which is a free service. A mediator is a neutral person, not employed by the school district, who assists you and the school in resolving differences. You may also request a due process hearing. Please have the school explain the process before you make a final decision.

There might be times when you and the school district disagree on important issues regarding your child's education. If agreement cannot be reached, you have the right to request an impartial mediator to help you and school personnel reach a mutually agreeable solution. It is important for you to know that mediation is voluntary and is conducted by a qualified, impartial mediator at no cost to you. Mediation cannot be used to delay or deny your right to a due process hearing or deny any other rights afforded under special education law. Each session in the mediation process shall be scheduled in a timely manner and shall be held at a location that is convenient to the parties in the dispute. An agreement reached by the parties in the dispute in the mediation process shall be set forth in a written mediation agreement. Discussions during mediation are confidential and may not be used as evidence in subsequent due process hearings or civil proceedings. Parties to mediation may be required to sign a confidentiality pledge before the mediation process begins.

STATE COMPLAINT PROCEDURES

If you feel the school district/agency is violating special education requirements for your child, you can file a written complaint with the Colorado Department of Education to resolve the problem.

You have a right to file a written complaint with the Colorado Department of Education if you feel the school district or agency has violated a specific requirement of federal special education regulations. The complaint must be filed in writing with the Department explaining the alleged violations. The Department will have 60 calendar days after the complaint is filed to:

1. give the school district or agency an opportunity to respond to the allegations;
2. give the parent an opportunity to submit additional information about the allegations;
3. carry out an impartial investigation;
4. review all relevant information and make an independent determination of whether a violation has occurred;
5. issue a written decision to the school district or agency and the parents, of the findings, conclusions, remedial actions, if applicable, and reasons for the final decision.

The school district is obligated to implement the final decision in an efficient and timely manner. Should either you or the school disagree with the final decision, you may request that the U.S. Secretary of Education review the decision.

To file a written complaint, send to: Federal Complaints Investigator, Office of the Commissioner, Colorado Department of Education, 201 East Colfax, Denver, Colorado, 80203.

IMPARTIAL DUE PROCESS HEARING

If an agreement cannot be reached between you and the school district, you may request a due process hearing. The hearing will be conducted by an impartial hearing officer. As a parent involved in the hearing you must be given certain rights, including the right to an appeal.

You or the school district may initiate a due process hearing regarding the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child.

Before a hearing is initiated, you or your attorney must provide written notice (which shall remain confidential), to the state education agency or the school district involved, providing the following information:

1. name of your child;
2. address of residence of your child;
3. name of school your child is attending;
4. description of the problem(s), including related facts; and
5. a proposed resolution of the problem to the extent known and available to you at that time.

The school district will have a form available for you to use to file the written notice.

You may then initiate a hearing by submitting a written request to the Director of Special Education of your school district.

The hearing will be arranged by your school district and conducted by an impartial hearing officer obtained through the Colorado Department of Education.

The hearing cannot be conducted by an employee of the state education agency or school district involved with the education or care of your child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

The school district must inform you of any free or low-cost legal or other relevant services available in the area if you request the information or if you or the school initiate a due process hearing.

At least five business days before a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this disclosure rule from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Each school district shall ensure that a final hearing decision is reached and mailed to the parties within 45 days after the receipt of a request for a hearing unless the hearing officer grants a specific extension of time, beyond the timelines above, at the request of either party.

The decision made in a due process hearing is final unless a party to the hearing appeals the decision under the procedures for administrative appeal described later in this document.

DUE PROCESS HEARING RIGHTS

Any party to a hearing has the right to:

1. be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
2. present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;
4. obtain a written or electronic verbatim record of the hearing;
5. obtain a copy of written or electronic findings of fact and decisions. (After deleting any personally identifiable information, the school district will transmit those findings and decisions to the State advisory panel and make them available to the public.)

As parents involved in the hearings, you must be given the right to have your child present, and the right to open the hearing to the public.

Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

ADMINISTRATIVE APPEAL: IMPARTIAL REVIEW

Any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

1. Examine the entire hearing records;

2. Ensure that the procedures at the hearing were consistent with the requirements of due process;

3. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described above apply;

4. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

5. Make an independent decision on completion of the review; and

6. Give a copy of written or electronic findings and the decision to the parties. (After deleting any personally identifiable information, the State educational agency will transmit those findings and decisions to the State advisory panel and make them available to the public.)

Each review involving oral arguments must be conducted at a time and place which is reasonably convenient to you and your child.

The State educational agency shall ensure that a final decision is reached in an administrative review and mailed to the parties within 30 days after the receipt of a request for a review, unless the reviewing official grants a specific extension at the request of either party. The decision made by the reviewing official is final, unless a party brings a civil action under the procedures described below.

CIVIL ACTION

Any party aggrieved by the findings and decision made in a hearing, who does not have the right to appeal, and any party aggrieved by the decision of a reviewing officer has the right to bring a civil action in State or Federal Court.

CHILD'S STATUS DURING PROCEEDINGS

During the pendency of any administrative or judicial proceeding regarding a complaint, unless you and the school district agree otherwise, your child must remain in his or her present educational placement.

If a hearing involves an application for initial admission to public school, your child, with your consent, must be placed in the public school program until the completion of all the proceedings.

AWARD OF ATTORNEYS' FEES

In any action or proceeding discussed above, the court, in its discretion, may award reasonable attorneys' fees as part of the cost to the parents or guardians of a child or youth with disabilities who is the prevailing party; however, hearing officers and complaints investigators may not award attorneys' fees.

Attorney fees may not be awarded relating to any meeting of the IEP Team unless such a meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state, for a mediation that is conducted prior to the filing of a complaint.

PRIVATE SCHOOL PLACEMENT

Parents who place their child in a private school without the school's endorsement, could be awarded reimbursement for private school educational costs if a court or hearing officer determines that the local school was not providing a free appropriate public education.

If the parents of a child with a disability, who previously received special education and related services from the local school district, enroll their child in a private school without the consent of, or referral from the school district, a court or due process hearing officer may require the school district to reimburse the parents for the cost of that enrollment if the court or hearing officer finds the school district had not made a free appropriate public education available to the child prior to the private school enrollment.

Reimbursement under this section is subject to exceptions. Additional information can be obtained from your school administrator.

This brochure was developed
by the
Colorado Department of Education,
Special Education Services Unit,
and the
Mountain Plains Regional Resource Center.